

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA
Plaintiff,

v.

Case No. 02-CR-105

DANTE CHEESE
Defendant.

DECISION AND ORDER

On May 22, 2008, I revoked defendant Dante Cheese's supervised release and sentenced him to 90 days in prison, with no supervision to follow. On May 28, 2008, defendant filed a pro se motion for a downward departure based on the sub-standard conditions of his confinement in a local jail. I dismiss the motion for lack of jurisdiction. In the alternative, I deny the motion.

The authority of a district court to alter a sentence after its imposition is strictly limited by Fed. R. Crim. P. 35. See United States v. Romandine, 206 F.3d 731, 735 (7th Cir. 2000). Rule 35 allows adjustment in three circumstances only: the judge may correct arithmetical, technical or other clear errors within seven days; the judge may correct a sentence on remand following an appeal; and the judge may reduce a sentence on a prosecutor's motion to reward substantial assistance that occurs after the date of sentencing. United States v. Zingsheim, 384 F.3d 867, 871 (7th Cir. 2004). There is no appellate remand or government motion in this case, and defendant's motion, which raises issue with the conditions at the Dodge County Jail and asks for a downward departure from the sentencing guidelines based on such conditions, does not allege any sort of error in the original sentence. Therefore, I am without jurisdiction

to entertain defendant's motion.

Even if I had jurisdiction, I would deny the motion. Defendant's sentence of 90 days was below the advisory guideline range of 4-10 months. Given the number and nature of the violations and the history of this case (defendant had been revoked once before), I would not (even if the jail conditions argument had been timely presented to me) have reduced the sentence further.

THEREFORE, IT IS ORDERED that the motion is **DISMISSED**. In the alternative, it is **DENIED**.

Dated at Milwaukee, Wisconsin, this 4th day of June, 2008.

/s Lynn Adelman

LYNN ADELMAN
District Judge